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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DONALD COOK, JR.,

Defendant and Appellant.

G040959

(Super. Ct. No. 07WF1424)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

James Donald Cook, Jr., appeals from a judgment after a jury convicted him of possession of a controlled substance and possession of a firearm by a felon. He argues insufficient evidence supports his conviction for possession of a controlled substance, and the trial court erroneously admitted evidence of indicia of drug sales and children's items found in his home. Neither of his contentions have merit, and we affirm the judgment.

FACTS

Officer Michael Wintersole lawfully searched Cook's residence at 5462 Acacia Avenue, Garden Grove. The house had three bedrooms: a master bedroom, and two other bedrooms. In the bedroom next to the master bedroom, Wintersole found bunk beds, toys, and children's clothing. In the third bedroom, he found a mattress on the floor and two laundry baskets full of clothing. He also found James Nichols, who told Wintersole he was staying there. Wintersole forced open the locked master bedroom door.

On top of a dresser, Wintersole found 342 milligrams of methamphetamine in a Ziploc baggie marked with dolphins, mail addressed to Cook at the Acacia Avenue address,¹ and male toiletries. He also found six pay-owe sheets, documents drug dealers maintain to record drug sales. Inside this dresser, there was male clothing.

Near the dresser, Wintersole found a make-up case that contained the following: a Bluetooth ear piece, Zig Zag rolling papers, pepper spray, tweezers, torches, lighters, a pill crusher, a calculator, a strainer, a filter, a bowl with what appeared to be methamphetamine, and push rods, which are used for scraping methamphetamine pipes.

Inside a shaving kit, Wintersole found unused baggies, some of them stamped with a dolphin, a 200-gram weight, lighters, torches, and a digital scale. In a tan metal box, Wintersole found four tall scales and a calculator.

¹ Wintersole testified there was one piece of mail from the County of Orange Child Services addressed to Cook and a female.

Inside the closet, Wintersole found a .22-caliber pistol and a pellet gun. He also found a black bag containing the following: .22-caliber bullets, a magazine clip, unused sandwich bags, an eyeglass case containing five needles, three pieces of glass tubing typically used for smoking crack cocaine, a flashlight, a torch, butane, lighters, digital scales, a “Sponge Bob Square Pants toothbrush,” and a small tin containing what appeared to be methamphetamine. The closet included male and female clothing.

Wintersole also found a cellular telephone, which is essential for drug dealers to communicate with their clients. In another dresser, Wintersole found female clothing, but he found no drugs or drug paraphernalia on or in this dresser. In the attached bathroom, accessible only through the master bedroom, there was a methamphetamine pipe resting in an ashtray on the toilet tank in plain view.

Officer James Kyle lawfully stopped Cook in his truck in Garden Grove. Kyle searched Cook and found \$1,650 in various denominations. Kyle later gave the money and Cook’s key ring to Wintersole. One of the keys on Cook’s key ring opened the lock on the master bedroom door in Cook’s home.

An information charged Cook with possession of a controlled substance, methamphetamine (Health & Saf. Code, § 11377, subd. (a)) (count 1), and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) (count 2).²

At trial, Kyle testified he found no drugs or drug paraphernalia on Cook, and Cook did not appear to be under the influence of a controlled substance. Wintersole, after detailing his narcotics training and experience, testified he found no drugs or drug paraphernalia anywhere in the house other than in the master bedroom. He explained the 200-gram weight and unused baggies are used for repackaging large quantities of drugs into smaller quantities for sale. He stated drug dealers typically have firearms to protect

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Before trial, the trial court granted Cook’s motion to dismiss count 2.

their investment. He stated that \$800 of the \$1,650 was in \$20 bills, a denomination typical in drug sales.

The jury convicted Cook of possession of a controlled substance. The trial court placed Cook on three years formal probation and ordered him to complete drug treatment pursuant to Proposition 36 (Pen. Code, § 1210).

DISCUSSION

I. Sufficiency of the Evidence

Cook argues insufficient evidence supports his conviction for possession of a controlled substance. We disagree.

“To determine the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible and of solid value, from which a rational trier of fact could find that the elements of the crime were established beyond a reasonable doubt. [Citations.] We need not be convinced of the defendant’s guilt beyond a reasonable doubt; we merely ask whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.]’ [Citation.] We must draw all reasonable inferences in support of the judgment. [Citation.] It is not our function to reweigh the evidence, reappraise the credibility of witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact. We may not reverse a conviction for insufficiency of the evidence unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. [Citation.] [¶] This standard of review also applies to circumstantial evidence. [Citation.] If the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the jury’s findings, our opinion that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citations.] However, “[e]vidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction. Suspicion is not evidence;

it merely raises a possibility, and this is not a sufficient basis for an inference of fact. [Citations.]’ [Citation.]” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955-956 (*Tripp*).)

“The crime of possession of methamphetamine consists of four elements: (1) defendant exercised control over or the right to control an amount of methamphetamine; (2) defendant knew of its presence; (3) defendant knew of its nature as a controlled substance; and (4) the substance was in an amount usable for consumption. [Citations.]” (*Tripp, supra*, 151 Cal.App.4th at p. 956, italics omitted; Jud. Council of Cal. Crim. Jury Instns. (2008) CALCRIM No. 2304.)

Here, Cook contends there was insufficient evidence of the first two elements. Cook claims that because he and a woman inhabited the master bedroom, there was no evidence he actually or constructively possessed the methamphetamine or knew it was present in his bedroom. Not so.

Possession and Control

Possession of methamphetamine can be either actual or constructive. Constructive possession exists “when the contraband is found in a place [that is] immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another. [Citation.]” (*People v. Williams* (1971) 5 Cal.3d 211, 215.) However, mere presence, or the opportunity to access a place where the contraband is found, without more, will not support a finding of unlawful possession. (*People v. Redrick* (1961) 55 Cal.2d 282, 285.)

Here, there was sufficient circumstantial evidence Cook constructively possessed and controlled the methamphetamine. The evidence demonstrated 5462 Acacia Avenue was Cook’s residence. The only locked room in the house was the master bedroom, and Cook had a key to the master bedroom on his key ring. Inside the master bedroom, there was 342 milligrams of methamphetamine in a Ziploc baggie lying on a dresser. Also on top of the dresser was mail addressed to Cook and male toiletries.

Inside this dresser, there was male clothing. That Cook had access to the locked master bedroom, he was the only male residing in that room, and the methamphetamine was found among his personal mail and male personal items supports the jury's conclusion Cook possessed and controlled the methamphetamine. The fact his female companion may have also possessed and controlled the methamphetamine does not preclude the determination Cook possessed and controlled it.

Relying on the fact a woman inhabited the master bedroom with him, Cook claims the evidence demonstrated he did not constructively possess the methamphetamine because he was not home when the methamphetamine was found, there was no evidence when he was last home, there was no evidence when the woman was last home, and when he was pulled over, he did not possess methamphetamine or appear to be intoxicated. Cook essentially asks us to reweigh the evidence, which we cannot do. (*Tripp, supra*, 151 Cal.App.4th at p. 955.) As stated above, there was sufficient evidence Cook possessed and controlled the methamphetamine.

Knowledge of Presence

A defendant's knowledge of the presence of methamphetamine is an essential element for the offense of possession of methamphetamine. (*Tripp, supra*, 151 Cal.App.4th at pp. 955-957.) Here, the evidence demonstrated Cook knew about the methamphetamine. On top of the dresser was mail addressed to Cook and male toiletries, and inside the dresser was male clothing. Based on these facts, and the fact Cook had a key to the bedroom, the jury could reasonably infer the dresser was Cook's. Among the items lying on top of the dresser in plain view was a Ziploc baggie containing 342 milligrams of methamphetamine. Thus, there was sufficient evidence Cook knew of the methamphetamine's presence on his dresser.

The cases Cook relies on to support his claim are inapposite. (*U.S. v. Ramirez* (9th Cir. 1989) 880 F.2d 236 [no evidence defendant knew of cocaine or paraphernalia or kept any clothes in the bedroom in which he slept previous night];

U.S. v. Soto (9th Cir. 1986) 779 F.2d 558 [mere proximity of weapon to passenger in car does not establish dominion or control necessary to support conviction for possessing firearms]; *U.S. v. Weaver* (9th Cir. 1979) 594 F.2d 1272 [no evidence passenger in a truck touched the package under his seat containing drugs or knew it was there]; *Delgado v. U.S.* (9th Cir. 1964) 327 F.2d 641-642 [no evidence linking defendant or wife to marijuana cigarettes found in nightstand].) Therefore, there was sufficient evidence from which the jury could conclude he possessed the methamphetamine and knew of its presence in his bedroom.

II. Admission of Evidence

Cooks contends the trial court erroneously admitted evidence of indicia of drug sales in the master bedroom and evidence of children's items in another bedroom. Again, we disagree.

Before trial, Cook moved to exclude evidence concerning guns, scales, baggies, the calculator, and the cash. Defense counsel argued the evidence was irrelevant because Cook was charged with possession of methamphetamine, and not possession of methamphetamine for sale. Counsel also argues the evidence was unduly prejudicial because the jury would likely convict him of a relatively minor possession of a controlled substance charge because he had guns and items indicating he sold drugs.

The trial court denied Cook's motion explaining it was "a rather close call." The court conceded the "relevance is not great" but reasoned the evidence had "some relevance" because there was so much drug sales paraphernalia that it tended to prove the person living in that room knew about those items, as well as the methamphetamine on the dresser. The court stated the "tough question" was whether the evidence was unduly prejudicial. The court opined the evidence did have "some prejudicial effect" because the jury might be inclined to convict him of possessing methamphetamine because he was a methamphetamine dealer. However, the court concluded the prejudicial effect of the evidence did not substantially outweigh its probative value because defense counsel

could argue that if someone was selling drugs, it was not Cook. The court concluded it believed the jury could focus on the sole issue at trial—whether Cook possessed the methamphetamine.

Cook also moved to exclude evidence of children's items in the bedroom next to the master bedroom. Defense counsel argued the evidence had no relevance and it was unduly prejudicial because the jury would be biased against Cook because there was drug sales occurring in a home where children lived. The court denied Cook's motion and explained the evidence was relevant to show the drugs did not belong to someone else. The court also opined any prejudicial effect of the evidence did not substantially outweigh its "obvious probative value."

Relevant evidence is "evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Although "there is no universal test of relevancy, the general rule in criminal cases [is] whether or not the evidence tends logically, naturally, and by reasonable inference to establish any [material] fact" (*People v. Freeman* (1994) 8 Cal.4th 450, 491.) Evidence that leads only to speculative inferences is irrelevant. (*People v. Stitely* (2005) 35 Cal.4th 514, 549.)

Evidence Code section 352, however, authorizes a trial court to exclude relevant evidence. "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) For purposes of Evidence Code section 352, prejudice means "evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. [Citation.]" (*People v. Heard* (2003) 31 Cal.4th 946, 976.) "We review a challenge to a trial court's choice to admit or exclude evidence under

[Evidence Code] section 352 for abuse of discretion. [Citation.]” (*People v. Branch* (2001) 91 Cal.App.4th 274, 282.)

Here, although Cook was not charged with possession of methamphetamine for sale, evidence of drug sales paraphernalia littered throughout the locked master bedroom that he had a key to access was relevant to prove Cook knew there was methamphetamine on the dresser and the nature/character of the substance, both elements of the charged crime. (CALCRIM No. 2304.) Evidence there was drug paraphernalia in virtually every area of the master bedroom tended to prove he knew there was methamphetamine on the dresser. And, any prejudicial effect of this evidence did not substantially outweigh its probative value. While we agree the challenged evidence might invoke some emotional bias against Cook, we cannot conclude it substantially outweighs the evidence’s probative value. Defense counsel was free to argue there was no evidence Cook possessed methamphetamine for sale. Therefore, the trial court properly admitted evidence of drug sales paraphernalia.

As to evidence of children’s items in the bedroom adjacent to the locked master bedroom, this evidence was relevant to the issue of whether the drugs belonged to another resident of the house. The fact children apparently resided in the adjacent bedroom tended to prove the methamphetamine did not belong to anyone in that room. While we again agree the challenged evidence might invoke some emotional bias against Cook, we cannot conclude it substantially outweighs the evidence’s probative value because there were no drugs or drug paraphernalia found anywhere in the house other than the locked master bedroom. Thus, the trial court properly admitted evidence of the children’s items in one of the rooms.

Relying on the lengthy deliberations (approximately five hours), request for readback of Wintersole’s testimony, and request to see the gun, Cook claims admission of the above evidence denied him his due process right to a fair trial. Because we have concluded the trial court properly admitted the evidence, his claim is meritless.

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.